

May 6, 2016

Annie Donovan
Director
Community Development Financial Institutions Fund
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington DC 20020

Dear Ms. Donovan:

RE: RIN 1559-AA00

Opportunity Finance Network appreciates the opportunity to comment on the Capital Magnet Fund interim regulations RIN 1559-AA00.

Opportunity Finance Network (OFN) is the leading national network of community development financial institutions (CDFIs) investing in opportunities that benefit low-income, low-wealth, and other under-resourced communities across America. OFN was one of the leading advocates for the creation of the Capital Magnet Fund (CMF) in the Housing and Economic Recovery Act of 2008 (HERA), and nine OFN Member CDFIs were awardees in the 2010 round of Congressionally-appropriated funding.

OFN is excited that the Capital Magnet Fund is once again available to support the development, preservation, and rehabilitation of affordable housing and related economic development activities. The CMF program is particularly valued for its enterprise-level support for CDFIs and affordable housing developers, and the flexibility of its capital is one of the program's greatest strengths.

We commend the CDFI Fund for its hard work on the application and interim rule, making this critical resource available as our nation faces an unprecedented and growing affordable housing crisis. We look forward to a continued partnership with the CDFI Fund to ensure the CMF is a success.

OFN would like to specifically comment on the following sections of the Interim Rule:

Section 1807.102: Relationship to Other CDFI Fund Programs

Section 1807.102 of the Interim Rule defers to the Notice of Fund Availability (NOFA), Notice of Guarantee Authority or Notification of Allocation Authority for the restrictions on CMF's use with other CDFI Fund Programs. The CMF NOFA prohibits the use of CMF funds in projects that are using funds received through any other CDFI Fund programs.

While OFN understands the CDFI Fund's intent to prevent organizations from using their own Financial Assistance (FA) or New Markets Tax Credit (NMTTC) awards for CMF projects,



the NOFA did not provide guidance regarding the use of CMF funds in an eligible project where another partner in the project also may be using other CDFI Fund program funds.

Many of the CMF projects funded under the inaugural funding round included multiple partners, and OFN is concerned that this lack of clarity may have impeded organizations from developing applications that reflect the best strategies to meet CMF goals and priorities, such as identifying key partners that may be using other CDFI Fund dollars. OFN urges the CDFI Fund to provide clarity around this issue in future funding rounds.

Section 1807.104: Definitions

“In Conjunction with Affordable Housing” - The definition was revised so that for a metropolitan area, “In Conjunction With” means located within the same census tract or within 1 mile of such affordable housing, and for a non-metropolitan area, “In Conjunction With” means located within the same county, township, or village, or within 10 miles of such Affordable Housing. OFN does not find the physical proximity requirements necessary, since we believe that having a documented, concerted strategy detailing the connection between the affordable housing and economic development activities suffices.

“Homeownership” - The definition of homeownership should be modified to explicitly identify cooperative or mutual housing structures approved by local or state law as an approved form of homeownership without requiring any additional approval from the CDFI Fund.

Section 1807.200 Applicant Eligibility

To ensure that CMF monies are directed to their intended purpose, OFN believes certain CDFI certification criteria should also be applied as eligibility screens for non-CDFI applicants. Demonstration of a commitment to community development is as important for CMF users as is the specific proportion of assets used for affordable housing. We urge the CDFI Fund to adopt the recommendation below concerning applicant eligibility:

A nonprofit affordable housing developer can be defined as a mission-driven 501(c)(3) organization that is not under the control or a subsidiary of a for-profit entity,¹ and is focused on developing, financing, and operating high quality affordable housing, and plans and implements other community and economic initiatives critical to low-income communities. The organization must have a demonstrated capacity for development implementation and proper financial management of funds, including the ability to execute high-impact affordable housing, achieve appropriate leverage, and responsibly administers and controls multiple sources of funds. In addition, the following CDFI certification requirements² should apply to nonprofit affordable housing developers:

- Have a primary mission of promoting community development;

¹ See IRC 42(h)(5) for LIHTC.

² CDFI Fund Regulations: § 1805.201.



- Primarily serve one or more target markets, which could be a specific geography in the case of a local or regional organization, multiple geographies in the case of a multi-state organization, or a specific community development sector in the case of a national organization;
- Provide development services in conjunction with its financing activities; and
- Maintain accountability to its defined target market(s).

Section 1807.302 Restrictions on use of CMF Award

Section 1807.302(c) limits the amount of funding that can be used for Economic Development Activities to no more than 30 percent in any given funding round. However, as there is no statutory limitation on the amount of funding eligible for financing Economic Development Activities, OFN urges the CDFI Fund not to impose a regulatory restriction on the amount of funding available for any particular eligible activity.

The CDFI Fund should instead use the NOFA to determine the percentage of funding available for Economic Development Activities, ensuring flexibility to address changing macroeconomic conditions and market needs in each application round. The CDFI Fund could also use the leveraging provisions of the program to prioritize particular financing activities, or otherwise prioritize applications that devote funds to particular purposes, but should not set a cap on the amount of the funding an awardee can use for economic development.

Section 1807.401 Rental Housing/Section 1807.402 Homeownership

OFN generally supports the CDFI Fund's aligning of the CMF program with certain requirements of the Low Income Housing Tax Credit (LIHTC) program. This alignment could help streamline burdensome reporting and compliance requirements for CDFIs utilizing LIHTCs to finance affordable rental housing.

However, OFN is concerned that while the interim rule may facilitate the creation of affordable rental housing, it is also creating barriers for the financing of affordable homeownership options for low-income families. The statutory intent under HERA was to provide flexible, institutional-level capital to CDFIs and nonprofit affordable housing developers to support the development and preservation of affordable housing, both rental and homeownership, and related economic development activities.

For example, restrictions on resale and ten-year affordability requirements in the interim rule will make it difficult for CMF funds to be used for homeownership. Attaching onerous resale covenants to a loan can deter otherwise appropriate and qualified homeowners not willing to risk that they can resell their home to a similar buyer in the future. It also runs counter to the goal of helping new homeowners build their net worth. We encourage the CDFI Fund to continue ensure the CMF funding is flexible enough to support the provision of affordable homeownership.



Definition of High Housing Need Areas

OFN supports the CDFI Fund's efforts to channel CMF dollars into targeted investment areas that ensure affordable housing is developed where needed most. However, we are concerned about the definition of "High Housing Need" used in the NOFA, defined as census tracts where: at least 20 percent of households are very low-income renters paying more than half their income for rent; are high poverty neighborhoods where greater than 20 percent of households have incomes below the poverty rate with a rental vacancy rate of at least 10 percent; or are underserved rural areas.

OFN echoes the positions stated by the Housing Partnership Network (HPN) and the Low Income Investment Fund (LIIF) that this definition is too narrow. The use of census tract-level data does not allow for a comprehensive, neighborhood-centered approach to creating and preserving affordable housing, and further, will limit the flexibility of the Capital Magnet Fund grant dollars. OFN supports HPN's recommendation of using zip codes, which cover a larger geographical area, instead of census tracts.

Additionally, the NOFA indicates that an applicant will score more favorably to the extent its strategy proposes affordable housing in areas of High Housing Need. OFN encourages the CDFI Fund to clarify the proposed method to determine how applicants will "score more favorably", whether through priority points or some other method, and to consider including affordable housing activities that support residential economic diversity as an additional priority area.

Recent rulemakings like FHFA's Duty to Serve Underserved Markets rule³ and HUD's Affirmatively Furthering Fair Housing rule⁴ encourage the deconcentration of poverty and foster residential economic diversity by supporting affordable housing activities in high opportunity areas, where low-income residents have access to better jobs, schools, and amenities and mixed income developments in high poverty areas.

OFN encourages the CDFI Fund to consider affordable housing in high opportunity areas and mixed income developments in areas of concentrated poverty as additional eligible investment areas for CMF recipients. However, we also acknowledge finding consensus around the definition of "high opportunity areas" remains a challenge. OFN would like to see the CDFI Fund continue to engage with CMF stakeholders, as well as federal and state agencies to provide clarity around the term for future funding rounds.

OFN also encourages the CDFI Fund to consider the financing of affordable housing and economic development activities in disinvested communities of color as an additional priority area. The housing and foreclosure crisis had a disparately negative impact on Black and

³ Enterprise Duty to Serve Underserved Markets, Notice of Proposed Rulemaking, 12 CFR Part 1282. December 18, 2015.

⁴ Affirmatively Furthering Fair Housing, Final Rule, 24 CFR Parts 5, 91, 92, 570, 574, 576, and 903. July 16, 2015



Latino communities, and in all housing affordability and security indicators, communities of color fare worse than their white counterparts. The Joint Center for Housing Studies found that minority households are especially likely to have severe housing cost burdens: 26 percent of black households, 23 percent of Hispanic households, and 20 percent of Asian and other minority households were severely burdened in 2013, compared with just 14 percent of white households.⁵

Communities of color are also struggling to recover from the housing crisis even as the market shows signs of rebounding. Homeownership rates for minority households remain far lower than those of white families: 68 percent of Whites are homeowners, as compared to 59 percent of Asians, 43 percent of Latinos, and 42 percent of African Americans.⁶ This gap in homeownership rates contributes to a growing racial wealth gap as homeownership and home equity are key drivers of wealth for communities of color: for Whites, home equity accounts for 58 percent of their net worth, for Latinos, 67 percent and for Asian homeowners, 72 percent. For African Americans, home equity accounts for nearly all of their personal net worth (92%).⁷

Further, although accounting for less than one in five zip codes, majority-minority communities make up half of the neighborhoods where house prices and home equity remain furthest behind, indicating a lag in the economic recovery and placing further downward pressure on the net worth of minority households.⁸ The CDFI Fund should consider channeling CMF resources to these communities to help address these housing challenges.

Reporting Requirements and Timelines

CDFIs in our network expressed concern about applying for funds without a clear understanding of any potential burdensome and complicated reporting requirements. In future rounds, the CDFI Fund should make all relevant materials, including any rules around compliance, available to potential applicants at the beginning of the application period.

Further, this year's compressed and overlapping timeline for several CDFI Fund program applications created challenges for many organizations. OFN urges the CDFI Fund to revise the timeline for award applications, allowing adequate time between each program application for thoughtful analysis of any changes to application materials, rules, or compliance that may impact an institution's decision making about applying for funding.

⁵ Joint Center on Housing Studies, "State of the Nation's Housing 2015", Harvard University.

<http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs-sonhr-2015-ch6.pdf>

⁶ Rebecca Tippet et al, "Beyond Broke: Why Closing the Racial Wealth Gap is a Priority for National Economic Security", Center for Global Policy Solutions, May 2014.

⁷ Id at 6.

⁸ Id at 5.



Finally, as this is the first funding round under the revised interim rule and new application, OFN encourages the CDFI Fund to conduct outreach to applicants, receive and document feedback, and to incorporate that feedback into future funding rounds.

We appreciate your consideration of these comments and look forward to the continued success of the Capital Magnet Fund. Please do not hesitate to contact me or Dafina Williams, Vice President, Public Policy (dwilliams@ofn.org; 215.320.4318) if you have questions or concerns about these recommendations.

Sincerely,

Mark Pinsky
President and CEO